MT SUPREME COURT ONLY 11

SENATE JUDICIARY
EXHIBIT NO. 11
DATE 2/18/09
SB 334

from Sen. Balyeat

Best Interest of Child Standard Unconstitutional in Custody Award to Nonparent Over Natural Parent Absent Finding of Abuse, Neglect, or Dependency: The best interest of the child standard referred to in 40-4-221 in determining the custody of a child whose custodial parent dies is unconstitutional to the extent that it allows the grant of a petition prior to the termination of the noncustodial parent's constitutional right to custody. Use of the standard is improper in that any showing that a nonparent may be able to provide a better environment than a natural parent is irrelevant to the question of custody between the two in view of the constitutional right of a parent to custody. Although 40-4-221 gives a nonparent standing to request a custody hearing, it does not give the District Court authority to deprive a natural parent of the right to custody absent a finding of abuse, neglect, or dependency on the part of the natural parent. In re A.R.A., 276 M 66, 919 P2d 388, 53 St. Rep. 543 (1996), following In re Doney, 174 M 282, 570 P2d 575 (1977), and overruling Brost v. Glasgow, 200 M 194, 651 P2d 32 (1982), and In re C.G., 228 M 118, 740 P2d 1139 (1987).

Applicability of Act When Unconstitutional Part Eliminated: If, when an unconstitutional part of an act is eliminated, the remainder is complete in itself and capable of being executed in accordance with the apparent legislative intent, the remainder of the act must be sustained. Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996). Section Unconstitutional -- Actual Rather Than Constructive Notice Required Prior to Proceeding Against Known Property Owner: This section essentially provides a delinquent taxpayer with a right of redemption and a right to bring a quiet title action. Both rights are property interests protected under the due process clause of the 14th amendment to the U.S. Constitution. When the identity of the property owner is known or is readily ascertainable, actual rather than constructive notice is required prior to a proceeding that will adversely affect the liberty or property interests of the property owner. Therefore, this section is unconstitutional under the 14th amendment to the extent that it deprives a delinquent taxpayer, whose name and address are reasonably ascertainable, of repurchase or quiet title action filing rights if those rights are not exercised within 30 days of the first publication of notice. (Chapter 407, L. 1997, was, as stated in the preamble, enacted in reaction to this case.) Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996).

1997

Provision Treating Victims of Nonresident Corporate Tortfeasors Differently From Victims of Other Nonresident Tortfeasors -- Unconstitutional Violation of Equal Protection: The provisions of 25-2-122(2) provide different venues for tort suits brought against nonresident corporate defendants and other nonresident defendants. Applying the rational basis test, the Supreme Court found no question that tort victims are not treated equally under the statutory venue limitations and that the subsection discriminates against a tort victim injured by a corporate nonresident, whose choice of venue is limited to only four options according to the corporate status of the defendant, as opposed to a tort victim injured by a noncorporate nonresident whose choice of venue may be any Montana county. By limiting the choice of venue, plaintiffs are unconstitutionally deprived of the equal protection guaranteed by this section. Davis v. Union Pac. RR Co., 282 M 233, 937 P2d 27, 54 St. Rep. 328 (1997), distinguishing Ford v.

Burlington N. RR, 250 M 188, 819 P2d 169 (1991). See also State ex rel. Burlington N. RR Co. v. District Court, 270 M 146, 891 P2d 493 (1995), followed in Isakson v. Burlington N. RR Co., 282 M 296, 937 P2d 472, 54 St. Rep. 389 (1997).

Unconstitutional to Impose Both a Juvenile and an Adult Sentence Upon Youth: The 1995 amendments to the purpose section of the Montana Youth Court Act made the Act espouse much more preventative, if not punitive, goals because the Act was amended to seek to prevent delinquency through imposition of enforceable and immediate consequences upon juveniles and to establish programs of detention and community protection. Obviously, it is no longer accurate to reason, as the Supreme Court did in In re C.H., 210 M 184, 683 P2d 931 (1984), that the Act's infringements upon juveniles' physical liberty are legitimate means of enhancing their protections within the meaning of section 15 of this article, providing that minors have all the fundamental rights of this article unless specifically precluded by laws that enhance the protection of minors. Moreover, it is no longer accurate to state, as the court did in In re C.S., 210 M 144, 687 P2d 57 (1984), that a Youth Court disposition is strictly for rehabilitation, not retribution. Indeed, the Extended Jurisdiction Prosecution Act (EJPA), by requiring the Youth Court to impose an adult sentence in addition to a juvenile sentence, with the adult portion stayed pending successful completion of the juvenile portion, goes beyond mere rehabilitation of a juvenile and injects the specter of retribution. Thus, the EJPA, on its face, violates the equal protection clause of this section by treating juveniles more harshly than adults. The EJPA also violates section 15 of this article by reducing, rather than enhancing, juveniles' rights as compared to adults' rights. The state has no compelling state interest in treating a juvenile as an adult and restricting the juvenile's physical liberty beyond the restrictions that are imposed upon an adult who commits the same offense as the juvenile. Furthermore, the paternalistic rationale of parens patriae does not apply to distinguish between the treatment of a juvenile and an adult when a juvenile is no longer sentenced solely as a juvenile, but as an adult as well. Although the EJPA is subject to a severability clause, the sentencing portion of the EJPA is necessary to its integrity; thus, the remaining provisions of the EJPA cannot be saved by the severability clause. In re S.L.M., 287 M 23, 951 P2d 1365, 54 St. Rep. 1480 (1997).

Statute Unconstitutional as Applied -- Invasion of Right to Privacy: Gryczan and others, all of whom were homosexuals, brought a declaratory judgment action to determine whether 45-5-505, as applied, violated their right of privacy. After reviewing the case of Bowers v. Hardwick, 478 US 186 (1986), in which the U.S. Supreme Court held that the federal constitution does not confer a fundamental right on homosexuals to engage in sodomy, the Supreme Court noted that it had long held that the Montana Constitution affords citizens broader protection of a right to privacy than does the U.S. Constitution and that since privacy is explicit in the Montana Constitution, privacy is a fundamental right and any statute limiting the right must pass the strict scrutiny test. The Supreme Court then applied the test enunciated in Katz v. U.S., 389 US 347 (1967), and adopted by the Montana Supreme Court in Hastetter v. Behan, 196 M 280, 639 P2d 510 (1982), and found that all adults have an expectation of privacy in noncommercial, consensual sexual conduct and that, while society may disapprove of homosexual conduct, society still recognizes that expectation of privacy, even concerning homosexual acts. The Supreme Court then determined that the interests advanced by the state in support of the constitutionality of the statute, the protection of public health by preventing the

spread of the HIV-related virus, and the protection of public morals were not supported by the facts and were therefore not compelling state interests justifying an invasion of privacy. For these reasons, the Supreme Court determined the statute to be unconstitutional as applied to noncommercial, same-sex consensual sex between adults. Gryczan v. St., 283 M 433, 942 P2d 112, 54 St. Rep. 699 (1997), followed in Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999).

Administration of Justice Standard Unconstitutional as Applied to Constitutionally Protected Medical Records -- Compelling State Interest Required: The defendant was treated for a broken jaw following an automobile accident. Concerned with the defendant's lack of pain, the treating physician ordered a blood alcohol test, the results of which were later discovered by an investigating officer through an investigative subpoena and used to convict the defendant of driving under the influence. On appeal, the Supreme Court affirmed the defendant's conviction but ruled that as applied to the discovery of constitutionally protected material such as medical records, the state law that allows the issuance of an investigative subpoena "if the administration of justice so requires" is unconstitutional. Medical records may be discovered through an investigative subpoena only upon a showing of compelling state interest under Art. II, sec. 10, Mont. Const. St. v. Nelson, 283 M 231, 941 P2d 441, 54 St. Rep. 576 (1997), followed in St. v. Ingraham, 1998 MT 156, 290 M 18, 966 P2d 103, 55 St. Rep. 611 (1998), and distinguished in St. v. Dolan, 283 M 245, 940 P2d 436, 54 St. Rep. 583 (1997).

1998

Economic Advantage Inadequate Reason for Denial of Public Right to Observe Government Deliberations in Corrections Vendor Process: A newspaper company sought to restrain the Department of Corrections from excluding the public from meetings of the committee that reviewed proposals for operating private prison facilities. The District Court held that the public had no right to observe the negotiation phase of the committee's work, but that once negotiations were completed, the process by which the conclusions were arrived at must be open to public observation. Both parties appealed. The Supreme Court noted that as part of an Executive Branch agency, the Department and the committee were considered governmental bodies pursuant to 2-15-104 for purposes of procurement and that under the constitutional right to know, proposals submitted by private vendors were considered documents of a public body or agency that, under 2-6-102, the public has a right to inspect. Under the two-part test in Missoulian v. Bd. of Regents, 207 M 513, 675 P2d 962 (1984), the only exception to the constitutional provision arises when the demand of individual privacy clearly exceeds the merits of public disclosure. The state contended that the meetings at issue were closed for economic advantage, but economic advantage is neither a privacy interest nor a sufficient reason for denying the public the opportunity to observe deliberations of public bodies or to examine public documents, including proposals submitted to the public body by a vendor, unless the proposal concerns a privacy interest involving legitimate trade secrets or individual safety. A public agency's desire for privacy does not provide an exception to the public's constitutional right to observe its government at work. To the extent that provisions in 18-4-304 or ARM 2.5.602 require exclusion of the public from the competitive bid process, those provisions are unconstitutional and unenforceable. Great Falls Tribune Co., Inc. v. Day, 1998 MT 133, 289 M

155, 959 P2d 508, 55 St. Rep. 524 (1998), following Mtn. States Tel. & Tel. Co. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181 (1981), State ex rel. Great Falls Tribune Co., Inc. v. District Court, 238 M 310, 777 P2d 345 (1989), Great Falls Tribune Co., Inc. v. Great Falls Pub. Schools, 255 M 125, 841 P2d 502 (1992), and Common Cause of Mont. v. Statutory Comm. to Nominate Candidates for Comm'r of Political Practices, 263 M 324, 868 P2d 604 (1994).

Entry of Residence to Levy Upon Personal Property While Judgment Debtor Incarcerated -- Entry and Search of Private Home Not Authorized by Writ of Execution: Dorwart was named defendant in two small claims actions, resulting in the entry of default judgments against him and the issuance of writs of execution to enforce the judgments. About 1 month later, while driving his truck, Dorwart was stopped and served with the two writs and was subsequently also arrested for driving under the influence and incarcerated. While Dorwart was in jail, two Sheriff's deputies entered Dorwart's home and garage without his permission or a warrant and seized various items of personal property pursuant to the writs, relying on the writs as the sole authority for authorization to enter the residence and conduct the search and seizure. Dorwart later filed a complaint, alleging various state and federal claims and common-law tort claims and contending that Montana's postjudgment execution statutes are unconstitutional. The District Court found that the deputies did not violate Dorwart's constitutional right to be free from unreasonable search and seizure because the writs constituted judicial authorization for their actions. On appeal, the prosecution relied on Ramsey v. Burns, 27 M 154, 69 P 711 (1902), for the proposition that one of the implied powers authorized by a writ of execution includes the levying officer's entry into a judgment debtor's residence or place of business in order to execute the writ and that on that basis, entry of the home was not unreasonable. The Supreme Court distinguished Ramsey because no constitutional search and seizure issue was raised in that case. Dorwart had a legitimate expectation of privacy in his home, and government intrusion without a search warrant was per se unreasonable, subject to only a few exceptions that did not apply. Citing Camara v. Municipal Court, 387 US 523, 18 L Ed 2d 930, 87 S Ct 1727 (1967), and G.M. Leasing Corp. v. U.S., 429 US 338, 50 L Ed 2d 530, 97 S Ct 619 (1977), the court found that the constitutional prohibition against unreasonable search and seizure applies in civil as well as criminal contexts because all citizens have a strong interest in securing their homes from government intrusion, regardless of the reason for the intrusion, and that placing limitations on the discretion of when, where, and how to conduct a search that intrudes upon a private area is the precise reason behind the search warrant requirement. Postjudgment execution procedures and writs of execution issued under the procedures did not sufficiently limit the deputies' discretion in executing the writs to satisfy constitutional search and seizure provisions. Thus, entry into Dorwart's residence and seizure of his property without permission or a warrant, relying only on the authority of the writs, violated Dorwart's constitutional search and seizure rights. Dorwart v. Caraway, 1998 MT 191, 290 M 196, 966 P2d 1121, 55 St. Rep. 777 (1998), following Neb. v. Hinchey, 374 NW 2d 14 (Nebr. 1985).

Limitation to One Jury Trial Held Unconstitutional: In 1997, the Legislature enacted the provisions codified at 46-7-102(1)(g), 46-17-201(3), and 46-17-311(1), providing that a person tried for a misdemeanor in Justice's or City Court who appeals to the District Court has the right

to only one jury trial. Woirhaye was charged with misdemeanor DUI and requested a jury trial in Missoula County Justice's Court. Upon his conviction by the Justice's Court jury, Woirhaye appealed to the District Court for a trial de novo pursuant to Art. VII, sec. 4(2), Mont. Const., and 46-17-311. Woirhaye asked that the District Court declare 46-17-201(3) unconstitutional, but the District Court denied his motion. Woirhaye then petitioned the Supreme Court for a writ of supervisory control, which was granted on the grounds that Woirhaye would otherwise be denied a fundamental right. The Supreme Court held that Woirhaye's right to a jury trial in both the Justice's Court or City Court and the District Court was a fundamental right guaranteed by Art. II, sec. 26, Mont. Const., and this section. The Supreme Court pointed out that the right to a jury trial is guaranteed by Art. III, sec. 2, clause 3, of the U.S. Constitution and the sixth amendment to the U.S. Constitution and also that even if that were not the case, Montana may, under the rationale of St. v. Bullock, 272 M 361, 901 P2d 61 (1995), provide rights in excess of those guaranteed by the U.S. Constitution. The Supreme Court noted, in response to the state's argument that this section guarantees "a" jury trial, that the state's argument was not persuasive against the language of Art. II, sec. 26, Mont. Const. The Supreme Court also distinguished Ludwig v. Mass., 427 US 618 (1976), holding that Art. VII, sec. 4(2), Mont. Const., was not implicated in the case, and stated that any language in N. Cent. Serv., Inc. v. Hafdahl, 191 M 440, 625 P2d 56 (1981), indicating that a requirement for a jury trial applicable to Small Claims Court was satisfied if the right was granted at the District Court level, was dicta and could not be relied upon to support the state's case that only one jury trial was required. Consequently, the Supreme Court held 46-7-102(1)(g), 46-17-201(3), and 46-17-311(1) to be unconstitutional as violating Woirhaye's right to a jury trial. Woirhaye v. District Court, 1998 MT 320, 292 M 185, 972 P2d 800, 55 St. Rep. 1298 (1998), followed in Balyeat Law, P.C. v. Harrison, 1999 MT 144, 295 M 13, 983 P2d 902, 56 St. Rep. 566 (1999).

1999

Arbitrary, Blanket Exclusion of Certain Activities From Nondegradation Review Unconstitutional as Applied -- Actual Danger Not Required -- Degradation of Environment Sufficient to Implicate Fundamental Rights: The District Court erred when it held that the fundamental right to a clean and healthy environment is not implicated unless there is a finding of actual injury and that mere degradation of water quality, absent actual injury, is not sufficient to implicate the fundamental right or to require strict scrutiny analyses. The right to a clean and healthful environment contained in this section is fundamental. Therefore, as applied to the facts of this case, to the extent that 75-5-317(2)(j) arbitrarily excludes certain activities from nondegradation review without regard to the nature or volume of the substance being discharged, it violates the environmental rights guaranteed by Art. IX, sec. 1, Mont. Const, and this section. (See 1999 amendments.) The intention of the framers of the constitution was to provide language and protections that are both anticipatory and preventative. The delegates did not intend to merely prohibit that degree of environmental degradation that can be conclusively linked to ill health or physical endangerment. Mont. Envtl. Information Center v. Dept. of Environmental Quality, 1999 MT 248, 296 M 207, 988 P2d 1236, 56 St. Rep. 964 (1999).

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues

raised before the State Tax Appeal Board, asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. Although the appraised value of Roosevelt's property declined by $161,757 in 1997, under 15-7-111, he was given credit for only a $3,235 difference and was assessed taxes based on a value of $817,362 rather than the actual 1997 appraised value of $658,840. In District Court, Roosevelt raised numerous alleged statutory and constitutional violations, including equal protection and due process concerns. The District Court held 15-7-111 unconstitutional on its face, in conflict with Art. VIII, sec. 3 and 7, Mont. Const., with the equal protection and due process clauses of both the state and federal constitutions, and with statutes pertaining to the valuation and assessment of real property. On appeal, the Supreme Court cited U.S. v. Raines, 362 US 17, 4 L Ed 2d 524, 80 S Ct 519 (1960), in reversing the holding that the statute was unconstitutional on its face because even though it imposed different tax burdens on various classes of taxpayers, the statute was neutral on its face. However, the court did not find it necessary to address all other issues raised or decided by the District Court beyond the equal protection question. The court first noted that the level of scrutiny applicable to this case did not rise to the level of strict scrutiny, which requires a compelling state interest for statutory classifications that treat otherwise similarly situated persons differently and is reserved for situations when a statutory classification impermissibly interferes with the exercise of a fundamental right or operates to a peculiar disadvantage of a suspect class. Although a legitimate state interest exists in reducing reliance on property taxes and avoiding property tax increases, the method in 15-7-111, which taxed property owners, such as Roosevelt, based on 124% of market value while other taxpayers paid less than full market value, was not rationally related to a legitimate state interest, so the court declined to decide whether a higher level of scrutiny applied to classifications created for property tax assessment. Rather, the court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in this section. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Theology as Impermissible Basis on Which to Make Law or Interpret Constitution: In deciding that statutory provisions prohibiting a physician assistant-certified from performing abortions were an unconstitutional invasion of the right of privacy and personal procreative autonomy, the Supreme Court clarified that its opinion was not a comment on the merits of sectarian doctrine or on the deep and sincerely held beliefs, values, and convictions of those who either favor abortion or oppose it on moral or religious grounds. The right of expression aimed at changing individual values and convictions and at fostering respect for the intrinsic value of all

life is protected by the first amendment to the U.S. Constitution and by section 7 of this article and this section. However, the doctrine of separation of church and state that is also embodied in the first amendment and in this section makes theology an impermissible basis on which to make law or interpret the constitution. Religious arguments do not count as legal arguments. The cost of a person's enjoyment of fundamental constitutional rights does not permit the government's infringement of personal and procreative autonomy in the name of political ideology. Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999).

Prohibition Against Abortion by Physician Assistant-Certified Unconstitutional Violation of Right of Privacy: After the decision in Mazurek v. Armstrong, 520 US 968, 138 L Ed 2d 162, 117 S Ct 1865 (1997), ibid., Dr. Armstrong and Cahill, a physician assistant-certified, filed this case in state District Court challenging the constitutionality of 37-20-103 and 50-20-109, which prohibited a physician assistant-certified from performing abortions. The District Court found that the prohibition affected a woman's right to obtain a legal first trimester abortion and that the state had advanced no compelling interest to justify prohibiting Cahill from performing abortions, as she had for 20 years, and granted plaintiffs' motion for a preliminary injunction. Noting that Montana adheres to one of the most stringent protections of its citizens' right of privacy in the United States, exceeding even the federal constitution, the Supreme Court affirmed, holding that legislation that infringes on the exercise of the right of privacy must be reviewed under a strict scrutiny analysis. Under this section, every individual is guaranteed the right to make medical judgments affecting that person's bodily integrity and health, in partnership with a chosen health care provider and free from government interference, except in very limited circumstances not at issue here. The court agreed that the statutory restrictions in question impacted a woman's right to procreative autonomy and her right to seek and obtain a specific lawful medical procedure from the health care provider of her choice, in this case a previability abortion from a physician assistant-certified, and were thus an unconstitutional violation of the right of privacy. Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999), following Gryczan v. St., 283 M 433, 942 P2d 112, 54 St. Rep. 699 (1997). See also Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under this section, and Planned Parenthood of Missoula v. St. (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under this section).

Comparative Negligence -- Requirement to Allocate Liability of Nonparties Unconstitutional: The portion of 27-1-703 requiring a jury to allocate injuries of a foster child to persons who had been released from liability by the claimant, to persons immune from liability, and to other nonparties without any procedural safeguards was stricken as an unconstitutional violation of substantive due process. (See 1995 amendment to 27-1-703.) Newville v. St., 267 M 237, 883 P2d 793, 51 St. Rep. 758 (1994). The 1995 amendments to 27-1-703 did not cure the due process problem created by the absence of a statutory mechanism by which the negligence of nonparties, including third-party defendants released from liability, can be fairly apportioned by a jury. Here, the District Court properly refused to permit the jury to apportion negligence to third-party defendants who were released from liability by plaintiff and

who were impecunious and judgment-proof. Cusenbary v. Mortensen, 1999 MT 221, 296 M 25, 987 P2d 351, 56 St. Rep. 864 (1999), distinguishing Whiting v. St., 248 M 207, 810 P2d 1177, 48 St. Rep. 396 (1991). (See 1997 amendment.)

Direct Filing of Information in District Court Rather Than Filing in Youth Court Violative of Due Process -- Probable Cause Hearing Required: Pursuant to 41-5-206, Butler, a youth, was charged in District Court with attempted deliberate homicide and attempted robbery. Butler moved to have the District Court declare 41-5-206 unconstitutional on grounds that it violated his right to due process by allowing the prosecution to file an information directly in District Court rather than Youth Court without first affording him a hearing. The motion was denied, and Butler appealed. Although it is within the province of the prosecution to move the District Court for leave to file an information in that court if the youth has attained a certain age and is alleged to have committed certain unlawful conduct, the prosecution's discretion ends at that point. Absent a pure prosecutorial waiver system, the ultimate decision rests with the District Court, which must make specific findings that there is probable cause to believe the youth committed the offense and that, because of the seriousness of the offense, the case should be filed in District Court. In Butler's case, the District Court based its decision solely on the affidavit of the prosecution and Butler did not have the opportunity, with assistance of counsel, to challenge the specific findings of the court. Although declining to declare the entire statute unconstitutional, the Supreme Court cited Kent v. U.S., 383 US 541, 16 L Ed 2d 84, 86 S Ct 1045 (1966), in holding that because the decision in this regard is potentially critically important to the youth, under the 14th amendment to the United States Constitution, Butler's right to due process requires that the District Court hold a hearing when rendering a decision under 41-5-206(3). St. v. Butler, 1999 MT 70, 294 M 17, 977 P2d 1000, 56 St. Rep. 291 (1999), followed and applied retroactively in St. v. O'Neill, 1999 MT 224, 296 M 71, 985 P2d 154, 56 St. Rep. 886 (1999).

Submission of Constitutional Initiative Amending Three Parts of Constitution Violative of Separate Vote Requirement: Plaintiffs filed an original application for declaration of judgment and injunctive relief, challenging the validity of Constitutional Initiative No. 75 (CI-75), which was passed by the voters and stated that no new tax or tax increase could be enacted unless approved by a majority of the electorate. The initiative amended Art. VIII, Mont. Const., revising state revenue and finance provisions; amended this section, providing that sovereign immunity did not shield public officials or employees from appropriate civil liability for violating CI-75; and provided that notwithstanding the referendum provisions of Art. VI, sec. 10, Mont. Const., before a bill imposing new or increased taxes is referred to the people, the Governor had veto power. The dispositive issue was that CI-75 had two or more constitutional amendments, in violation of Art. XIV, sec. 11, Mont. Const., which is a cogent constitutional recognition of the circumstances under which Montana voters receive constitutional initiatives, namely that a separate vote is required for each proposed constitutional amendment. Citing Armatta v. Kitzhaber, 959 P2d 49 (Oreg. 1998), the Supreme Court held that the separate vote requirement is distinguishable as different and narrower than the single subject requirement in Art. V, sec. 11, Mont. Const., and that to the extent that a constitutional amendment may be valid under the single subject rule but fail under the separate vote rule, holdings to the contrary in State ex rel. Teague v. Bd. of Comm'rs, 34 M 426, 87 P 450 (1906), State ex rel. Hay v. Alderson, 49 M 387, 142 P 210 (1914), and State ex rel. Corry v. Cooney, 70 M 355, 225 P 1007 (1924), were

overruled. Because CI-75 expressly amended three parts of the Montana Constitution without allowing a separate vote on each amendment, CI-75 was unconstitutional under Art. XIV, sec. 11, Mont. Const. Marshall v. St., 1999 MT 33, 293 M 274, 975 P2d 325, 56 St. Rep. 142 (1999), following State ex rel. Hinz v. Moody, 71 M 473, 230 P 575 (1924), and Sawyer Stores, Inc. v. Mitchell, 103 M 148, 62 P2d 342 (1936).

Application of Weapon Enhancement Statute to Felony Conviction When Underlying Offense Requires Proof of Weapon Use Unconstitutional Under Montana Double Jeopardy Provision: When presented with the question of whether the weapon enhancement statute, 46-18-221, violates the double jeopardy provisions of this section, the Supreme Court held that the Montana Constitution affords greater protection against multiple punishment than the federal constitution and that application of the weapon enhancement statute to felony convictions when the underlying offense requires proof of the use of a weapon violates Montana's constitutional double jeopardy provision. In the instant case, the only factor raising Guillaume's charge from misdemeanor assault to felony assault (now assault with a weapon) was the use of a weapon. The distinction between the two offenses and the different penalties imposed by each offense is the Legislature's way of punishing a criminal defendant for the use of a weapon in committing an assault. Thus, when the weapon enhancement statute was applied to the felony assault (now assault with a weapon) conviction, Guillaume was subjected to double punishment--once when the charge was elevated from misdemeanor assault to felony assault (now assault with a weapon) and again when the weapon enhancement statute was applied. This is exactly what double jeopardy was intended to prevent. The state's argument, that double jeopardy did not protect against multiple punishments for the same offense because that protection is not explicit in the constitutional language, failed because the fifth amendment to the U.S. Constitution has been held in N.C. v. Pearce, 393 US 711, 23 L Ed 2d 656, 89 S Ct 2072 (1969), to protect against multiple punishments for the same offense, and the Montana Constitution provides at least the same protection or greater. Further, the fact that legislative modification of the felony assault (now assault with a weapon) statute could achieve the same result as the present sentencing scheme did not mean that double jeopardy did not apply in this case. St. v. Guillaume, 1999 MT 29, 293 M 224, 975 P2d 312, 56 St. Rep. 117 (1999), distinguishing St. v. Davison, 188 M 432, 614 P2d 489 (1980), and St. v. Zabawa, 279 M 307, 928 P2d 151, 53 St. Rep. 1162 (1996), followed in St. v. Brown, 1999 MT 31, 293 M 268, 975 P2d 321, 56 St. Rep. 139 (1999), St. v. Roullier, 1999 MT 37, 293 M 304, 977 P2d 970, 56 St. Rep. 157 (1999), St. v. Aguilar, 1999 MT 159, 295 M 133, 983 P2d 345, 56 St. Rep. 629 (1999), St. v. Smith, 2000 MT 57, 299 M 6, 997 P2d 768, 57 St. Rep. 272 (2000), St. v. Weitzel, 2000 MT 86, 299 M 192, 998 P2d 1154, 57 St. Rep. 368 (2000), St. v. Hart, 2000 MT 332, 303 M 71, 15 P3d 917, 57 St. Rep. 1398 (2000), and St. v. Gustafson, 2000 MT 364, 303 M 386, 15 P3d 944, 57 St. Rep. 1554 (2000), and distinguished in St. v. Park, 2001 MT 157, 306 M 98, 30 P3d 1062 (2001), and St. v. Anderson, 2001 MT 188, 306 M 243, __P3d__ (2001). Guillaume will not be retroactively applied to cases not pending on direct appeal or to cases that were final when that opinion was issued. St. v. Nichols, 1999 MT 212, 295 M 489, 986 P2d 1093, 56 St. Rep. 827 (1999). Aguilar was followed in St. v. Gustafson, 2000 MT 364, 303 M 386, 15 P3d 944, 57 St. Rep. 1554 (2000).

Arbitrary, Blanket Exclusion of Certain Activities From Nondegradation Review Unconstitutional as Applied -- Actual Danger Not Required -- Degradation of Environment

Sufficient to Implicate Fundamental Rights: The District Court erred when it held that the fundamental right to a clean and healthy environment is not implicated unless there is a finding of actual injury and that mere degradation of water quality, absent actual injury, is not sufficient to implicate the fundamental right or to require strict scrutiny analyses. The right to a clean and healthful environment contained in Art. II, sec. 3, Mont. Const., is fundamental. Therefore, as applied to the facts of this case, to the extent that 75-5-317(2)(j) arbitrarily excludes certain activities from nondegradation review without regard to the nature or volume of the substance being discharged, it violates the environmental rights guaranteed by Art. II, sec. 3, Mont. Const., and this section. (See 1999 amendments.) The intention of the framers of the constitution was to provide language and protections that are both anticipatory and preventative. The delegates did not intend to merely prohibit that degree of environmental degradation that can be conclusively linked to ill health or physical endangerment. Mont. Envtl. Information Center v. Dept. of Environmental Quality, 1999 MT 248, 296 M 207, 988 P2d 1236, 56 St. Rep. 964 (1999).

Quantification of Tribal Water Rights Required -- 1997 Amendment Unconstitutional: In an effort to avoid the result created by In re Application for Beneficial Water Use Permit, 278 M 50, 923 P2d 1073, 53 St. Rep. 777 (1996), the 1997 Legislature passed Senate Bill No. 97, which substantively eliminated the former protection of Indian reserved water rights provided by 82-5-311. The state conceded that the protection of existing water rights in this section includes water rights reserved for Indian reservations and contended that those rights were not affected by Senate Bill No. 97, but rather that those rights would be considered in that part of the analysis requiring that water be legally available. The state also pointed out the provisional nature of any water use permit and alleged that there were some uses that would not diminish instream flow and that use permits could thus be issued without affecting reserved Indian water rights, regardless of the quantification of those rights. However, under State ex rel. Greely v. Confederated Salish & Kootenai Tribes of the Flathead Reservation, 219 M 76, 712 P2d 754 (1985), it was found that Indian reserved water rights are owned by the Indians, and because that ownership interest exists under federal law and does not depend on the use of the water, the Supreme Court was not persuaded that the state's permitting process might allow uses of Indian reserved water that in the long term might not diminish instream flows. The provisional nature of permits was not determinative either because use of water that may have been reserved by federal law for the tribes was no less impermissible simply because it was temporary and subject to termination following final quantification of the tribes' rights by adjudication or negotiation. Under the 1997 amendments, permits are still limited to water that is "legally available", but that phrase is not defined. Construing the phrase in a manner that sustains its constitutional validity, the Supreme Court interpreted "legally available" to mean that there is water available that, among other things, has not been federally reserved for Indian tribes. Therefore, as in In re Application for Beneficial Water Use Permit, the state cannot determine whether water is legally available on the Flathead Reservation because it cannot determine whether the issuance of permits would affect existing water rights until the tribes' rights are quantified by a compact negotiation under 85-2-702 or by a general inter sese water rights adjudication. To allow the issuance of water use permits on the reservation prior to quantification of the tribes' pervasive reserved right would require use of water that might belong to the tribes, in violation of this section, which protects existing water rights whether adjudicated or not. Confederated Salish & Kootenai Tribes v. Clinch, 1999 MT 342, 297 M 448, 992 P2d 244, 56 St. Rep. 1356 (1999).

Market Value of State Land Rights-of-Way Set by Statute at 1972 Levels -- Unconstitutionality: The plain language of 77-1-130 requires that full market valuations of right-of-way acreage for historic deeds on state trust lands be based on the median values for the classifications of land at 1972 levels, leaving the Department of Natural Resources and Conservation no choice but to use those levels instead of current market value. The state argued that pursuant to 40 A.G. Op. 24 (1983), the figures in 77-1-130 are merely a minimum above which the Department may charge full market value. However, the statutory language is mandatory rather than discretionary and violates the provisions of the Montana Constitution and The Enabling Act, which require the state to receive full market value for school trust lands, and thus is unconstitutional. Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800, 56 St. Rep. 1065 (1999).

Statute Allowing State Lands to Remain Idle While Lessees Determine Value of Improvements -- Unconstitutionality: Under 77-6-305, the value of improvements placed on the leasehold by a former lessee is required to be paid by the new lessee before the new lease may be issued if the former lessee chose not to remove the improvements. The District Court found the provision constitutional even though it might result in less revenue because of delay caused by lease delays, concluding that the Department of Natural Resources and Conservation must have latitude to administer school trust lands. The Supreme Court disagreed, holding that portion of 77-6-305 unconstitutional on its face. The state's discretion to administer the trust is broad, but not unlimited, and must conform to the requirements of the trust. The statute allows trust lands to idle indefinitely while former and new lessees determine the value of the improvements, which is inconsistent with the trust mandate that full market value be received for the lands. Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800, 56 St. Rep. 1065 (1999).

Prohibition Against Abortion by Physician Assistant-Certified Unconstitutional Violation of Right of Privacy: After the decision in Mazurek v. Armstrong, 520 US 968, 138 L Ed 2d 162, 117 S Ct 1865 (1997), ibid., Dr. Armstrong and Cahill, a physician assistant-certified, filed this case in state District Court challenging the constitutionality of 50-20-109 and this section, which prohibited a physician assistant-certified from performing abortions. The District Court found that the prohibition affected a woman's right to obtain a legal first trimester abortion and that the state had advanced no compelling interest to justify prohibiting Cahill from performing abortions, as she had for 20 years, and granted plaintiffs' motion for a preliminary injunction. Noting that Montana adheres to one of the most stringent protections of its citizens' right of privacy in the United States, exceeding even the federal constitution, the Supreme Court affirmed, holding that legislation that infringes on the exercise of the right of privacy must be reviewed under a strict scrutiny analysis. Under Art. II, sec. 10, Mont. Const., every individual is guaranteed the right to make medical judgments affecting that person's bodily integrity and health, in partnership with a chosen health care provider and free from government interference, except in very limited circumstances not at issue here. The court agreed that the statutory restrictions in question impacted a woman's right to procreative autonomy and her right to seek and obtain a specific lawful medical procedure from the health care provider of her choice, in this case a previability abortion from a physician assistant-certified, and were thus an unconstitutional violation of the right of privacy. Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St.

Rep. 1045 (1999), following Gryczan v. St., 283 M 433, 942 P2d 112, 54 St. Rep. 699 (1997). See also Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under Art. II, sec. 10, Mont. Const.), and Planned Parenthood of Missoula v. St. (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under Art. II. sec. 10, Mont. Const.).

2000

Limit on Corporate Contributions to Ballot Issues: Montana voters approved Initiative Measure No. 125 (I-125) in November 1996. I-125 prohibited direct corporate spending in connection with ballot issues, other than by nonprofit corporations formed solely for political purposes. The measure allowed a corporation to establish and administer a separate, segregated fund that could solicit contributions from shareholders, employees, or members of the corporation. In July 1998, Initiative Measure No. 137 (I-137), restricting certain types of mining, was certified for the November ballot. Appellee Montana Mining Association (MMA) and other organizations subject to I-125 sought to delay and then invalidate the election in which Montana's voters approved I-137 on the ground that I-125 unconstitutionally constrained their participation in the election process. Appellee Montana Chamber of Commerce (MCC) brought a federal declaratory action, alleging that I-125 was unconstitutional, and sought an injunction against its enforcement. MMA brought suit in September 1998, requesting a preliminary injunction that would either waive I-125, as applied to MMA, or delay a vote on I-137 until after the I-125 case was resolved. The District Court consolidated the actions. On summary judgment, the District Court ruled that I-125 restricted core political speech, but concluded that a trial was necessary to determine whether a compelling state interest justified the restriction. The District Court accepted the contentions of the I-125 opponents, ruling that at least as applied, the measure infringed the first amendment rights of speech and association of those subject to its prohibitions. The initiative was not narrowly tailored to address only the spending of large corporations. Requiring corporations to fund ballot-issue campaign speech through segregated funds impermissibly deprived them of their ability to communicate political ideas directly to the electorate. The initiative prevented the electorate from being exposed to diverse political viewpoints on matters of public policy. The proponents' evidence did not establish domination of the initiative process through corporate expenditures. Accordingly, the District Court concluded that the corporations were entitled to defend their economic interests by using their treasuries to fund their participation in ballot initiative campaigns. Ed Argenbright, the Montana Commissioner of Political Practices, appealed from the District Court's judgment for MCC, MMA, and the other opponents of I-125. The Ninth Circuit Court of Appeals affirmed the District Court, finding that I-125 unconstitutionally restricted public discussion in the initiative process. A restriction destructive of the right of public discussion, without greater or more imminent danger to the public interest than existed in this case, was held to be incompatible with the freedoms secured by the first amendment. The issue of whether the District Court should have delayed or invalidated the I-137 election, together with the question whether MMA's preelection request for injunctive relief should have been granted, was moot. The District Court did not abuse its discretion in failing to void the results of the I-137 election. Mont. Chamber of

Commerce v. Argenbright, 226 F3d 1049 (2000).

Punitive Damages Case Considered Civil Action -- Requirement That Punitive Damages Award Be Unanimous Unconstitutional: Under this section, in all civil actions, two-thirds of the jury may render a verdict that has the same force and effect as if the entire jury had concurred in the decision. A civil action is prosecuted for the enforcement or protection of a right or the redress or prevention of a wrong. Here, Finstad was injured by asbestos in defendant's mine and sued for redress and to prevent defendant from committing similar wrongful conduct. Thus, Finstad's suit, including the claim for punitive damages, constituted a civil action. Punitive damages are merely a component of recovery of the underlying civil cause of action, imposed as enlarged damages for a civil wrong, not a substitute for criminal punishment. Because punitive damages are civil actions, the portion of 27-1-221(6) that requires that an award of punitive damages be unanimous as to liability and amount directly conflicts with this section and is unconstitutional. Finstad v. W.R. Grace & Co., 2000 MT 228, 301 M 240, 8 P3d 778, 57 St. Rep. 934 (2000).

Statutes Granting Child Support Enforcement Division Judicial Power to Make and Enforce Child Support Orders Violative of Constitutional Separation of Powers: As part of a marriage dissolution, the District Court ordered that the husband pay monthly child support in a specific amount. The Child Support Enforcement Division (CSED) subsequently notified the court that it intended to modify the order pursuant to its authority in 40-5-272 and 40-5-273. The court, sua sponte, then enjoined CSED from modifying any child support orders issued by a Montana District Court, asserting that CSED's actions in modifying a court order violated the constitutional separation of powers clause. On appeal, CSED maintained that the statutes did not violate the separation of powers clause because: (1) the statutory scheme was merely a quasi-judicial function that did not threaten the institutional integrity of the Judicial Branch; (2) the statutes in question were a reasonable response to both the federal legal requirements for expedited child support modification and the sheer magnitude of child support collection in Montana; (3) CSED was empowered to modify a support order only if the facts changed; (4) every contested modification was subject to a hearing before an administrative law judge; (5) all modifications were subject to judicial review; and (6) the Legislature's grant of jurisdictional authority to CSED was not exclusive. The District Court responded that the statutes were an unconstitutional violation of separation of powers because: (1) they gave CSED judicial power that is exclusively reserved to the judiciary; (2) they gave CSED statutory authority to modify a child support order, file it with the District Court, and then enforce the order as a District Court judgment; and (3) the procedure for judicial review of a CSED modification was not automatic and was limited by the scope of the Montana Administrative Procedure Act. The Supreme Court concluded that 40-5-272 and 40-5-273 are an unconstitutional violation of the separation of powers clause to the extent that they grant CSED the judicial power to make and enforce child support orders without automatic and mandatory judicial review. Although appreciative of the magnitude of the agency's modification and enforcement tasks, the court found that that fact did not justify unbridled departure from constitutional norms respecting the autonomy of the individual branches of government. Seubert v. Seubert, 2000 MT 241, 301 M 382, 13 P3d 365, 57 St. Rep. 1006 (2000), distinguishing Chastain v. Chastain, 932 SW 2d 396 (Mo. 1996), and State of Iowa ex rel. Sara Allee v. Gocha, 555 NW 2d 683 (Iowa 1996).

School Territory Transfer Statutes Unconstitutional -- Insufficient Guidelines for Delegation of Legislative Authority: In 1994, the respondents, individuals residing in both Rosebud and Big Horn Counties but outside of the Northern Cheyenne Indian Reservation, petitioned their respective County Superintendents of Schools requesting a territory transfer from the Lame Deer High School District (LDHSD--created in 1993) back to the Colstrip and Hardin High School Districts. The requests were granted. LDHSD appealed the decisions to the State Superintendent of Public Instruction, who reversed the decisions. The respective District Courts reversed the Superintendent of Public Instruction's decision. The Supreme Court reversed the District Courts' decisions on the grounds that the school territory transfer statute is an unconstitutional delegation of legislative power. The broad grant of discretion to a County Superintendent of Schools, unchecked by any standard, policy, or rule of decision, renders the statute unconstitutional. Hayes v. Lame Deer High School District, 2000 MT 342, 303 M 204, 15 P3d 447, 57 St. Rep. 1464 (2000). See also Belgrade Elementary & High School District No. 44 v. Morris, 2000 MT 347, 303 M 245, 15 P3d 482, 57 St. Rep. 1484 (2000), and In re Petitions to Transfer Territory, 2000 MT 348, 303 M 249, 16 P3d 1000, 57 St. Rep. 1486 (2000).

1999 Coal Producer's License Tax Violative of Constitutional Coal Severance Tax Provisions: By simple majority vote, the 1999 Legislature passed House Bill No. 260, which created a license tax on the production of coal and allocated revenue from the tax to various state programs. Several legislators challenged the validity of the new tax, contending that by creating a license tax on the same taxable event for which the state coal severance tax is imposed and then providing a credit against the severance tax in an amount slightly greater than the amount of the license tax, the Legislature simply diverted what in substance and character are coal severance taxes to purposes other than the coal tax trust fund, in violation of this section. The Supreme Court agreed, noting that the only difference between the coal severance tax and the coal producer's license tax was the purpose for which each was allocated. A tax on the production of natural resources is characterized by the nature of the activity upon which the tax is imposed, and the effect of a legislative assessment is more important than its label in determining the character of the tax. Legislative imposition of a tax can become unlawful when done to accomplish an unlawful end, which was the case in this instance because the coal producer's license tax diverted production-based coal severance taxes for an unconstitutional purpose. Although the Legislature has the authority to determine the percentage of the coal severance tax, in this case, the Legislature simply gave a different name to the same tax and thereby diverted revenue to causes other than the coal tax trust fund. A coal severance tax by any other name is just as dedicated. By diverting and allocating coal severance tax revenue in a manner contrary to the requirement in this section and by doing so without the required three-fourths vote of each house of the Legislature, House Bill No. 260 violated the constitution; thus, the state was enjoined from enforcing House Bill No. 260. Montanans for the Coal Trust v. St., 2000 MT 13, 298 M 69, 996 P2d 856, 57 St. Rep. 73 (2000). See also Oliver Iron Co. v. Lord, 262 US 172, 67 L Ed 929, 43 S Ct 526 (1923), Gomillion v. Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125 (1960), and Dept. of Revenue v. Kurth Ranch, 511 US 767, 128 L Ed 2d 767, 114 S Ct 1937 (1994).

Punitive Damages Case Considered Civil Action -- Requirement That Punitive Damages Award Be Unanimous Unconstitutional: Under Art. II, sec. 26, Mont. Const., in all civil actions, two-thirds of the jury may render a verdict that has the same force and effect as if the

entire jury had concurred in the decision. A civil action is prosecuted for the enforcement or protection of a right or the redress or prevention of a wrong. Here, Finstad was injured by asbestos in defendant's mine and sued for redress and to prevent defendant from committing similar wrongful conduct. Thus, Finstad's suit, including the claim for punitive damages, constituted a civil action. Punitive damages are merely a component of recovery of the underlying civil cause of action, imposed as enlarged damages for a civil wrong, not a substitute for criminal punishment. Because punitive damages are civil actions, the portion of 27-1-221(6) that requires that an award of punitive damages be unanimous as to liability and amount directly conflicts with Art. II, sec. 26, Mont. Const., and is unconstitutional. Finstad v. W.R. Grace & Co., 2000 MT 228, 301 M 240, 8 P3d 778, 57 St. Rep. 934 (2000).

2003

Occupational Disease v. Workers' Compenation Benefits: Because the benefits provided for partial disability pursuant to 39-72-405(2), MCA (1997), were less than provided for the same partial disability pursuant to 39-71-703, MCA (1997), of the Workers' Compensation Act, the Plaintiff was denied equal protection of the law in violation of Article II, Sec. 4 of the Montana Constitution. Stavenjord v. Montana State Fund, 2003 MT 67, 314 Mont. 468, (2003).

Building Code Election Provisions Invalid: The application and enforcement of building codes is an issue of public safety that affects all persons living in the affected area, not only record owners of real property. The governmental entity overseeing building codes, whether state, county or municipal, is not such a special-purpose unit that its functions and actions exclusively or disproportionately affect record owners of real property over other constituents living in the area but not owning property. Elections to determine who may impose and enforce building codes in a given area are general interest rather than special interest elections. A law restricting the franchise may be upheld only upon the State showing a compelling interest. The State has failed to make that showing. Senate Bill No. 242 enacted in 2001 was invalid in its entirety. Finke v. State, 2003 MT 48 (2003).

Reduction of Disability Benefits Invalid: Because 39-72-706, MCA, of the Occupational Disease Act required reduction of disability benefits for non-occupational factors, while the Workers' Compensation Act did not, the Plaintiff's right to equal protection was violated. Schmill v. Liberty Northwest Insurance Corp., 2003 MT 80 (2003).

Unisured Motorist Stacking of Coverage: Hardy alleged that he was entitled to recover $150,000 by stacking three $50,000 underinsured motorist coverages for which he paid three separate premiums. The Court held that section 33-23-203, MCA, is not rationally related to the stated objective of maintaining affordable insurance in Montana, nor any other "permissible legislative objective" that we can imagine, and constitutes an arbitrary and capricious action. Consequently, section 33-23-203, MCA, to the extent that it allows charging premiums for illusory coverage, violates substantive due process and is unconstitutional. Hardy v. Progressive Specialty Insurance Co., 2003 MT 85, 315 Mont. 107 (2003).

2004

Assignment of Holdover Senators: Senate Bill No. 258, Senate Bill No. 445, and Senate Joint Resolution No. 23 concerning the assignment of holdover Senators violate Article V, section 14, of the Montana Constitution by impermissibly injecting the Legislature into the redistricting and reapportionment duties of the Montana Districting and Apportionment Commission. Wheat v. Brown, 2004 MT 33 (2004).

Euthanasia

School Funding